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11 *Proposed Counsel to the Official*
12 *Committee of Unsecured Creditors of*
Easterday Ranches, Inc.

13 UNITED STATES BANKRUPTCY COURT
14 EASTERN DISTRICT OF WASHINGTON

15 In re:
EASTERDAY RANCHES, INC., *et al.*,
16 Debtors.¹

Chapter 11

Lead Case No. 21-00141-11
Jointly Administered

**DECLARATION OF CHRISTOPHER B.
DURBIN IN SUPPORT OF MOTION FOR
AN ORDER DIRECTING RULE 2004
EXAMINATIONS OF THE DEBTORS AND
NON-DEBTOR PARTIES**

19 _____
20 _____
21 ¹ The Debtors, along with their case numbers, are as follows: Easterday Ranches, Inc.
(21-00141) and Easterday Farms, a Washington general partnership (21-00176).

1 I, Christopher B. Durbin, hereby declare, pursuant to 27 U.S.C. § 1746, as
2 follows:

3 1. I am an attorney in good standing admitted to practice in the
4 Washington. I am a partner of the law firm of Cooley LLP ("Cooley"), proposed
5 counsel to the Official Committee of Unsecured Creditors of Easterday Ranches, Inc.
6 (the "Ranches Committee").¹

7 2. On April 27, 2021, the Ranches Committee filed its Motion for an Order
8 Directing Rule 2004 Examinations of the Debtors and Non-Debtor Parties [Dkt. No.
9 644] (the "Motion"). Contemporaneously herewith, the Ranches Committee filed its
10 Reply in support of the Motion.

11 3. I submit this declaration in support of the Motion and Reply. Except as
12 otherwise noted, I have personal knowledge of the matters set forth herein.

13 4. On or about April 30, 2021, counsel for the Ranches Committee
14 contacted all known counsel for the targets in the Motion to invite discussions
15 regarding the information requests. Specifically, we sent emails to counsel to (i) the
16 Debtors; (ii) Cody and Debby Easterday and Karen Easterday (collectively, the
17 "Easterday Family"); (iii) CHS Hedging, LLC ("CHS"); (iv) Tyson Fresh Meats, Inc.
18 ("Tyson"); (v) Segale Properties LLC ("Segale"); (vi) Easterday Dairy, LLC
19 ("Dairy"); (vii) Easterday Farms Produce, Co. ("Produce"); EPO, LLC ("EPO"); and
20

21 ¹ Capitalized terms not otherwise defined have the meanings set forth in the Motion.

1 3E Properties, LLC (“3E”); (viii) Weyns Farms LLC (“Weyns Farms”); and
2 (ix) English Hay Company, Inc. (“English Hay”). [*See also* Motion, Ex. 2 [Dkt. No.
3 644-2] (complete list of Non-Debtor Parties).]

4 5. At that time, we further inquired of counsel for the Easterday Family
5 whether they also represented any other members of the Easterday family or
6 Easterday family affiliates identified in the Motion: Kimberly Easterday, Scott
7 English, Jody Easterday, Andrew Willis, Cully Easterday, and Shani Easterday.²

8 6. The Ranches Committee’s discussions, to date, with each of the Non-
9 Debtor Parties with known counsel are detailed below. For each Non-Debtor Party
10 that accepted our invitation to discuss the Motion, the Ranches Committee has
11 specified which of the 28 Requests (including sub-parts) identified in Exhibit 1 to the
12 Motion [*see* Dkt. No. 644-1, at 11–24] are directed to them. Other than the Debtors,
13 only a small subset of the 28 Requests are directed to any particular Non-Debtor
14 Party.

15 7. Based on constructive dialogue with the Debtors, the Ranches
16 Committee informed each of the Non-Debtor Parties that had engaged in informal
17 meet-and-confer discussions at the time (the Easterday Family, Tyson, Segale, and
18 CHS) on May 12, 2021, that the Ranches Committee had elected to continue the
19 hearing on the Motion for an additional two weeks, until June 2, 2021. Additionally,

20 _____
21 ² See **Exhibit A** for a representative example of our April 30, 2021 emails to the
represented Non-Debtor Parties.

1 in response to requests from several of the Non-Debtor Parties, the Ranches
2 Committee twice agreed (on May 12, 2021 and May 26, 2021) to courtesy extensions
3 of all Non-Debtor Parties' deadline to file responses to the Motion.

4 Debtors

5 8. I understand from conversations with the Ranches Committee's
6 financial advisor—B. Riley Advisory Services (“B. Riley”)—that the Ranches
7 Committee began gathering informal “diligence” discovery from the Debtors
8 immediately after its formation, typically through weekly calls between the Debtors
9 and the Ranches Committee or otherwise through communication between the
10 parties.³

11 9. After the Motion was filed, counsel for the Debtors and the Ranches
12 Committee, as well as their respective financial advisors, engaged in regular and
13 extensive discussions to (i) catalogue all information provided by the Debtors to date,
14 (ii) ensure that Cooley and B. Riley had access to the data rooms established by the
15 Debtors, (iii) specify additional categories of documents and information requested
16 by the Ranches Committee, and (iv) meet and confer regarding the existence,
17 accessibility, relevance, and scope of the Ranches Committee's Requests to the

18 ³ Cooley entered its appearance as counsel for the Ranches Committee on April 16,
19 2021 [*see* Dkt. No. 587] and filed the Ranches Committee's motion for substitution
20 of counsel on April 19, 2021 [*see* Dkt. No. 589], which was approved on April 29,
21 2021 [Dkt. No. 659]. Cooley's retention application is pending [*see* Dkt. Nos. 705,
706], but for convenience, Cooley is referred herein as counsel to the Ranches
Committee.

1 Debtors as well as the costs to, and burdens on, the Debtors of producing responsive
2 materials.

3 10. During the course of these discussions, primarily during conference
4 calls from May 5, 2021 to May 18, 2021, counsel for the Debtors and the Ranches
5 Committee worked together cooperatively and constructively and were able to
6 resolve their disagreements regarding the Ranches Committee's Requests to the
7 Debtors. The Ranches Committee has since received from the Debtors all of the
8 requested documents and information available to the Debtors, including a large
9 volume of documents that the Debtors had previously produced to the Department of
10 Justice ("DOJ") in connection with the DOJ's investigation and criminal prosecution
11 of Cody Easterday.

12 11. The Ranches Committee's counsel and financial advisor are continuing
13 to review the documents and information provided by the Debtors to date and will
14 continue to work cooperatively with the Debtors to address follow-up requests. In
15 light of the progress that the Ranches Committee has made with the Debtors—
16 particularly the large volume of responsive documents and information provided by
17 the Debtors—counsel for each side negotiated a stipulation to ensure the parties'
18 continued cooperation and the availability of expedited dispute resolution (if
19 necessary), in consideration of the Ranches Committee withdrawing the Motion
20 without prejudice as to the Debtors. The parties' stipulation was filed on May 28,
21 2021 [Dkt. No. 763].

1 CHS

2 12. On May 10, 2021, counsel for the Ranches Committee and CHS,
3 respectively, first engaged in meet-and-confer discussions regarding the Motion,
4 during which we identified the specific Requests that were directed to CHS. In a
5 series of email exchanges and telephone calls thereafter, the parties reached
6 agreement on a narrowed date range and scope of Requests, as well as CHS's
7 commitment to produce materials responsive to the modified Requests upon receipt
8 of a valid subpoena duces tecum. In particular, counsel for the Ranches Committee
9 explained that it would be amenable to utilizing search terms to minimize the burden
10 of producing electronically stored information, such as emails.

11 13. As a result of these cooperative and productive meet-and-confer
12 discussions with CHS, the Ranches Committee agreed to enter into a stipulation
13 (similar to the form agreed to with the Debtors) with CHS and to withdraw the
14 Motion without prejudice as to CHS. The parties' stipulation was filed on May 28,
15 2021 [Dkt. No. 766].

16 Easterday Family

17 14. On April 30, 2021, counsel for the Ranches Committee contacted Tim
18 Conway, whom we understood to be counsel to Karen Easterday, and Jeff Misley,
19 whom we understood to be counsel to Cody and Debby Easterday, via email to invite
20 a discussion regarding the Motion and the Requests therein directed specifically to
21 their respective clients.

1 15. Counsel for the Ranches Committee engaged in meet-and-confer
2 discussions with Messrs. Conway and Misley on May 7, 11, 20, and 24, 2021. Based
3 on their representations during those discussions, counsel for the Ranches Committee
4 understood that Messrs. Conway and Misley (i) did not formally represent any of the
5 Non-Debtor Parties other than Karen Easterday (Mr. Conway) and Cody and Debby
6 Easterday (Mr. Misley); (ii) would nonetheless be taking the lead in meet-and-confer
7 discussions on behalf of the other unrepresented Easterday family members,
8 including Kimberly English, Scott English, Jody Easterday, Andrew Willis, Cully
9 Easterday, and Shani Easterday; and (iii) would also coordinate with counsel for the
10 various non-Debtor Easterday family companies, including Produce, EPO, 3E, and
11 English Hay, and lead meet-and-confer discussions with the Ranches Committee on
12 behalf of those entities.

13 16. During these meet-and-confer discussions with counsel to the Easterday
14 Family, we repeatedly explained and clarified that, among other things, the Ranches
15 Committee (i) did not intend to seek all of the Requests from every member of the
16 Easterday family or their related entities; (ii) would leverage to the greatest extent
17 possible the documents and information available to and produced by the Debtors;
18 (iii) would cooperate with the Easterday Family to understand the scope of responsive
19 materials within their possession and the costs and burdens of production; and
20 (iv) needed counsel's cooperation to identify which specific Easterday family
21 members and/or related entities were in possession of responsive materials.

1 17. On May 10, 2021, counsel for the Ranches Committee sent via email a
2 document to Messrs. Conway and Misley that identified the Ranches Committee's
3 Requests that are specifically applicable to the Easterday Family, which pared down
4 the Requests by approximately half. On May 11, 2021, we also provided a template
5 for a personal financial statement to illustrate the level of detail and types of financial
6 information that the Ranches Committee is requesting from the individual members
7 of the Easterday Family.

8 18. Counsel for the Ranches Committee further agreed to compromise
9 proposals from Messrs. Conway and Misley to narrow and limit the Ranches
10 Committee's Requests—including an agreement to shorten the time frame of the
11 discovery requests by five years from 2011 to 2016, which the Ranches Committee
12 understands to be when the Cody Easterday fraud began—and confidentiality
13 restrictions on produced documents.

14 19. On May 24, 2021, counsel for the Easterday Family produced
15 approximately 1,400 pages of documents requested by the Ranches Committee,
16 which they identified as tax returns, bank account statements, and credit card
17 statements from Cody and Debby Easterday. A second production followed on May
18 27, 2021, comprising approximately 600 pages, which counsel identified as "property
19 records" from Cody and Debby Easterday and "financial statements and entity
20 documents" from Produce, Dairy, EPO, and 3E.

20. The Ranches Committee's counsel and financial advisor have not yet fully reviewed the May 24 and 27 productions, but it is clear that the Ranches Committee will need additional productions from the Easterday family members and non-Debtor entities. Counsel for the Ranches Committee will endeavor to work cooperatively and efficiently with the Easterday Family's counsel to address such follow-up requests. Of note, counsel for the Ranches Committee intends only to serve discovery requests that are necessary and relevant to its investigation.

21. It remains unclear, however, whether and to what extent any documents or information will be produced by the unrepresented Easterday family members. It is equally unclear, because counsel for the non-Debtor Easterday family entities have never directly engaged with the Ranches Committee, what volume of responsive documents and information those entities possess and are willing to produce.

Dairy

22. On April 30, 2021, counsel for the Ranches Committee sent an email to Gary Blacklidge and Russ Garrett, whom we understood to be counsel to Dairy, to invite a discussion regarding the Motion and the Requests therein directed specifically to Dairy.

23. We have received no response to our April 30 email and have had no contact with counsel to Dairy to date.

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25. On May 3, 2021, Michelle Green, responded to confirm that she represents Produce and 3E in connection with these chapter 11 cases, and “also represent[s] EPO, LLC and Jody Easterday in other matters.” Ms. Green further stated that Jeff Misley and Tim Conway would be “taking the lead on responding to this request on behalf of the various non-debtor entities and family members to which this request is directed (including with respect to EPO, LLC and Jody Easterday).”⁴

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27. On April 30, 2021, counsel for the Ranches Committee sent an email to Tim Solomon, whom we understood to be counsel to English Hay, to invite a discussion regarding the Motion and the Requests therein directed specifically to English Hay.

DURBIN DECL. I/S/O MOTION FOR 2004
EXAMINATION OF NON-DEBTOR PARTIES

28. Mr. Solomon responded via email the same day to propose an initial discussion the following week, after which counsel for the Ranches Committee proposed—and Mr. Solomon accepted—a call on May 7, 2021.

29. Mr. Solomon, however, informed counsel for the Ranches Committee via email on May 6, 2021, the day before the previously scheduled initial discussion, that “counsel to other persons/entities subject to the Committee’s Rule 2004 motion are going to take the lead in responding to the requests on behalf of the various non-debtor entities/family members to which the motion is directed.” As such, Mr. Solomon stated his belief that a call between English Hay and the Ranches Committee would be “premature.”⁵

30. Counsel for the Ranches Committee responded via email to agree to Mr. Solomon's request that we first discuss the Requests with counsel for the Easterday Family (Messrs. Conway and Misley).

31. We received no further communication from Mr. Solomon prior to his filing of a joinder in various other objections to the Motion on May 28, 2021, on behalf of English Hay [Dkt. No. 762].

Weyns Farms

32. On April 30, 2021, counsel for the Ranches Committee contacted Roger Bailey and Steve Sackman, whom we believed to be counsel to Weyns Farms and

⁵ A true and correct copy of Mr. Solomon's May 6, 2021 email, is attached hereto as **Exhibit C**.

1 Sunray Farms, via email to invite counsel to discuss the Motion. We received no
2 response and sent a follow-up email on May 6, 2021.

3 33. Weyns Farms's counsel did not respond until May 14, 2021, when Mr.
4 Sackman called to inquire regarding the deadline to respond to the Motion. Later
5 that day, counsel for the Ranches Committee informed Mr. Sackman of the continued
6 hearing date and again requested an initial discussion regarding the Motion and the
7 Ranches Committee's Requests to Weyns Farms. We received no response and sent
8 yet another follow-up request via email on May 21, 2021.

9 34. It was not until May 24, 2021 that Mr. Sackman discussed the Motion
10 with counsel for the Ranches Committee, during which I identified (and confirmed
11 via email) the sole Request (No. 20) that was directed to Weyns Farms. On May 25
12 and 26, 2021, during one subsequent telephone call and email correspondence, the
13 Ranches Committee agreed to Mr. Sackman's proposal to narrow the date range of
14 the Request to Weyns Farms.

15 35. Mr. Sackman further stated that Weyns Farms was amenable to
16 producing documents relating to Weyns Farms's relationship with Ranches but
17 would not produce documents relating to the other Debtor, Farms. I informed Mr.
18 Sackman that the Ranches Committee could not agree to such a limited production,
19 and he agreed to confer with his client and resume our meet-and-confer discussions
20 thereafter.

1 36. The Ranches Committee received no further communication from Mr.
2 Sackman before Weyns Farms filed its objection on May 28, 2021 [Dkt. No. 748].

3 **Tyson**

4 37. On May 10, 2021, counsel for the Ranches Committee and Tyson,
5 respectively, engaged in meet-and-confer discussions regarding the Motion. During
6 those discussions, and in follow-up email correspondence, the Ranches Committee
7 identified the specific Requests (Nos. 2(i)–(j), 3(c)–(d), 3(h), 8, 25, and 26) that were
8 directed to Tyson.

9 38. The Ranches Committee and Tyson have reached agreement regarding
10 an initial production consisting of documents that Tyson previously produced to the
11 DOJ in connection with the investigation and criminal prosecution of Cody
12 Easterday. Tyson produced those documents on May 27, 2021. The Ranches
13 Committee’s review of those documents is ongoing, and the parties mutually intend
14 to conduct further meet-and-confer discussions to address any follow-up requests.

15 **Segale**

16 39. On May 5 and May 14, 2021, counsel for the Ranches Committee and
17 Segale, respectively, engaged in meet-and-confer discussions regarding the Motion.
18 During those discussions, the Ranches Committee identified the only two specific
19 Requests (Nos. 4 and 20) that were directed to Segale as well as Segale’s position
20 regarding the existence of responsive materials and the costs and burdens of
21 production.

40. The Ranches Committee and Segale have reached an agreement regarding an initial production consisting of documents that Segale previously produced to the DOJ in connection with the investigation and criminal prosecution of Cody Easterday. Segale produced those documents on May 28, 2021. The Ranches Committee's review of those documents is ongoing, and the parties mutually intend to conduct further meet-and-confer discussions to address any follow-up requests.

Dated: June 1, 2021

/s/ Christopher B. Durbin
Christopher B. Durbin

Exhibit A

Representative Example of April 30, 2021 Emails to Non-Debtor Parties

Fang, Weiru

From: Indyke, Jay
Sent: Friday, April 30, 2021 3:48 PM
To: tim.conway@tonkon.com
Cc: Klein, Michael; Durbin, Christopher; Lazerowitz, Evan; Fang, Weiru
Subject: Easterday/ Ranches Committee 2004 Motion

Mr. Conway,

As you are aware, our firm has recently been selected and substituted in as counsel for the Ranches Creditors Committee. We understand that in these proceedings your firm is currently representing Karen Easterday. As you know on April 27 on behalf of the Ranches Committee we filed a motion for relief under Bankruptcy Rule 2004 seeking information from various parties, including your client. The hearing date on that motion is May 19 and the current response deadline is May 12.

We are reaching out to you to see if we can set a time next week to discuss our information requests with you. Please let us know what time and dates will work for you for this discussion.

In addition, aside from the clients noted above, please let us know if you also represent any other members of the Easterday family or Easterday family affiliates that are also the subject of our 2004 motion. These persons and entities include Kimberly Easterday, Scott English, Jody Easterday, Andrew Willis, Cully Easterday and Shani Easterday. We look forward to hearing from you.

Jay

Jay R. Indyke
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Exhibit B

Ms. Green's May 3, 2021 Email

Fang, Weiru

From: Michelle Green <michelle@ggw-law.com>
Sent: Monday, May 3, 2021 5:12 PM
To: Indyke, Jay
Cc: Klein, Michael; Durbin, Christopher; Lazerowitz, Evan; Fang, Weiru; 'Jeffrey C. Misley'; Tim Conway
Subject: RE: Easterday/ Ranches 2004 Motion
Attachments: Michelle A_ Green.vcf

[External]

Jay-

In response to your various emails, I do represent 3E Properties and Easterday Farms Produce, Co. ("EFPC") in connection with the referenced bankruptcy case. I also represent EPO, LLC and Jody Easterday in other matters. Jeff Misley and Tim Conway will be reaching out to you to coordinate a call to discuss your below request and will be taking the lead on responding to this request on behalf of the various non-debtor entities and family members to which this request is directed (including with respect to EPO, LLC and Jody Easterday). To the extent they file a response to this motion, I plan to file a joinder on behalf of 3E Properties and EFPC. As such, I do not believe we need to schedule a call at this time. If you disagree and still believe I need to participate in a call with your office, please advise and I will coordinate with Jeff and Tim to join for that call when that is scheduled.

Thank you,



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From: Indyke, Jay <jindyke@cooley.com>
Sent: Friday, April 30, 2021 1:21 PM
To: Michelle Green <michelle@ggw-law.com>
Cc: Klein, Michael <mklein@cooley.com>; Durbin, Christopher <cdurbin@cooley.com>; Lazerowitz, Evan <elazerowitz@cooley.com>; Fang, Weiru <wfang@cooley.com>
Subject: Easterday/ Ranches 2004 Motion

Ms. Green,

As you are aware, our firm has recently been selected and substituted in as counsel for the Ranches Creditors Committee. We understand that in these proceedings your firm is

currently representing EPO, LLC. As you know on April 27 on behalf of the Ranches Committee we filed a motion for relief under Bankruptcy Rule 2004 seeking information from various parties, including your client. The hearing date on that motion is May 19 and the current response deadline is May 12.

We are reaching out to you to see if we can set a time next week to discuss our information requests with you. Please let us know what time and dates will work for you for this discussion.

In addition, aside from the clients noted above, please let us know if you also represent any other members of the Easterday family or Easterday family affiliates that are also the subject of our 2004 motion. These persons and entities include Kimberly Easterday, Scott English, Jody Easterday, Andrew Willis, Cully Easterday and Shani Easterday. We look forward to hearing from you.

Jay

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Exhibit C

Mr. Solomon's May 6, 2021 Email

Fang, Weiru

From: Tim Solomon <tsolomon@llg-llc.com>
Sent: Thursday, May 6, 2021 5:30 PM
To: Indyke, Jay
Cc: Klein, Michael; Durbin, Christopher; Lazerowitz, Evan; Fang, Weiru
Subject: Re: Easterday/ Ranches Committee 2004 Motion

[External]

Jay,

Following up on our earlier communication, I have been told by my client that counsel to other persons/entities subject to the Committee's Rule 2004 motion are going to take the lead in responding to the requests on behalf of the various non-debtor entities/family members to which the motion is directed. Specifically, Tonkon Torp and/or Sussman Shank. Have you heard from them? At this time, I believe a call tomorrow would be premature. If you disagree and believe a Committee-English Hay call is necessary, please advise.

Thank you,
Tim

Timothy A. Solomon

Admitted in Oregon, Washington, and New York



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On Sun, May 2, 2021 at 1:30 PM Indyke, Jay <jindyke@cooley.com> wrote:

Tim,

I am going to send you a calendar invite for noon PT on Friday. If something has come up and that is a problem let us know. Thanks.

Jay

Jay R. Indyke

Partner